

HB 433

IMPACT OF EXEMPT WELLS ON RANCHES

MONTANA HOUSE -- NATURAL RESOURCES COMMITTEE

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BACKGROUND:

I am BOB SIMS 1554 N Hwy 69 Boulder, Mt 59632 (406) 287-5117

My wife and I own and operate a small cow/calf ranch in Boulder Valley 10 miles north of Cardwell.

We have water rights out of the Boulder River dating back to 1881

More and more often the Boulder River goes dry in mid to late August

Jefferson drainage is a closed drainage since the State has allocated more water than is available in most years but we still have a major problem in that the State keeps giving away our water via the EXEMPT WELL loophole. The "Combined Appropriation" definition in HB 433 makes this problem worse by encouraging more use of exempt wells for irrigation.

PROBLEM:

I could not decide to irrigate another quarter section on the bench since I could not get additional water rights for this land. Even if I could get water rights, they would be very junior and I would have to stop using the water as soon as anyone with more senior right objected to my use.

However, if I decide to "grow houses" on this same quarter section I can divide the area into 30 (or more) 5 acre lots, drill 30 (or more) EXEMPT wells and use more water (300 acre feet for 30 wells) than if I was growing alfalfa.

These EXEMPT water rights have a higher priority than even the most senior water rights held by anyone in the valley in that you can keep pumping even after every other source of water in the valley has gone dry. No one is going to demand that a homeowner stops using water.

This flaw in Montana Water Allocation Law will, sooner or later, force all of the ranchers out of business by cutting off their ability to grow forage. I know of no ranches in this area that would be economically viable without an irrigated forage base. Furthermore, this flaw encourages ranches to sub-divide as soon as possible to maximize their land value by grabbing the shrinking supply of available water before someone else gets to the water. This loss of viable ranches and their replacement by "water grab" subdivisions will have a profound impact on the quality of life in Montana, not just on the ranches but in every small town in the State.

The State with DEQ does NOT even try to determine the impact of exempt wells or proposed subdivision on existing wells or other water sources or on any future wells in the area. The fact that a proposed subdivision with its exempt wells will put an adjacent rancher with the most senior water rights out of business by stealing his irrigation water is NOT DEQ's concern. Nor, it appears is it the concern of anyone else in State government.

Now, to make things even worse, HB 433, proposes to define "combined appropriation" as only wells/springs that are physically connected together. The problem is not about how wells are handled above ground; the problem is how we use the water that is available in Montana. Montana does not have enough water to irrigate every acre that someone wants to grow grass on. Taking actions to encourage the use of more ground water with exempt wells, as HB 433 currently does, is wrong.

We are seeing more and more five (5) acre subdivisions that are sold as "own your own Montana mini ranch. Bring your horses". Soon after someone buys his mini-ranch he realizes that you can not feed even one (1) horse on five (5) acres of cactus and prickly pear. What happens, he already has a well so he irrigates. You can now buy irrigation systems that are made to be moved with your 4-wheeler in response to this rapidly growing market. We can not keep doing this in Montana.

Some people claim that ground water is a PRIVATE PROPERTY issue. I do not see how you have any more PRIVATE PROPERTY claims to ground water flowing through your land than you have to surface water flowing across your land. IT IS THE SAME WATER!

POTENTIAL SOLUTIONS:

First, we need to get over the erroneous concept that ground water and surface water are different waters. Surface water is the only source of ground water. When you draw out ground water, you are using water that would have become surface water or surface water, from some place, is flowing in to refill the aquifer. Believing that you can use ground water without impacting surface water is like believing drawing water from the bottom of the lake does not impact the water on the surface of the lake. USING GROUND WATER IMPACTS THE AVAILABILITY OF SURFACE WATER. It may

take months or years to see the impact but the impact is there. Is it OK if your new exempt well doesn't impact the surface water until a year from now? Five years from now? Just when is the impact OK? Once you have allowed these wells and you begin to see the impact on surface water just how do you propose to recover? You, as a group, will never have the political will to make existing houses turn off their water. You need to get in front of the problem and act before the problem is insurmountable.

SUGGESTION FOR HB 433:

First, defining "Combined Appropriation" as only wells that are physical connected is a major step in the wrong direction. This allows someone to take as much water as he wants by simply putting more holes in the ground. This allows anyone to effectively get new surface water rights by simply putting a series of low cost, shallow wells in sub-irrigated areas near a stream. They can't draw water directly out of the stream without surface water rights but does anyone really believe that this is not the same water. Small shallow well pumps are cheap to buy and operate.

I THINK WE CAN ALL AGREE THAT GETTING RID OF EXEMPT WELLS IS NOT A FEASIBLE SOLUTION.

So, let's use HB 433 to help solve the problem, not make it worse.

The Town of Whitehall is currently installing a sewer system. They have determined that the average residence, in Whitehall uses 42,000 gallons of water per year. The current exempt well "allocation" is 3,236,150 gallons per year (10 acre feet) or 77 times the average residential use in Whitehall.

Until the Ground Water Investigation Program (GWIP) is complete and we have, at least, some idea of how much ground water exists in any give watershed; HB 433 should limit the amount of water that can be taken with an exempt well to 1 acre foot per year. That is 323,615 gallons or almost 8 times what the average resident of Whitehall uses per year. That is more than adequate to run a household and a very large garden. This should have little or no impact on development, home sales or well drillers and greatly reduces the potential impact on senior water rights.

After the GWIP has been completed in each watershed, the ground water allocation of exempt wells in that watershed can be adjusted accordingly. If there is very limited ground water in a watershed more control of exempt wells may be required. If there is lots of available ground water we can all put it to good use.

It makes sense to increase the funding for the GWIP so that the available ground water information can be gathered as rapidly as possible. Limiting the exempt well water withdrawal to 323,615 gallons per year will reduce the potential impact on senior water rights until the GWIP process is complete. It is much easier to increase the exempt well water allocation than it will be to decrease it if the GWIP finds there is little to no available excess water in a watershed.